

WAUKESHA COUNTY BOARD OF ADJUSTMENT SUMMARY OF MEETING

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, March 26, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Vice-Chairman
Robert Bartholomew
Paul Schultz
Mary Voelker

BOARD MEMBERS ABSENT: Linda Radler, Chairman

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Gregory C. Panas, BA03:015, petitioner
David Huibregtse, BA03:016, petitioner
Lora Havland-Reich, BA03:016, neighbor
Tim Thiele, BA03:017, petitioner
Tom Thiele, BA03:17, petitioner
Mike Thiele, BA03:017, nephew of the petitioners
Erin Waldron, BA03:18, petitioner
Vilas Scott, BA03:18, father of the petitioner
Mr. and Mrs. Mark Cukla, BA03:018, neighbors
David Barta, BA03:019, petitioner
Leroy Zimdars, BA03:010, neighbor
Steve Hoehn, BA02:133, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of February 26, 2003.*

The motion was seconded by Mr. Schultz. Ms. Voelker and Mr. Ward abstained because they indicated they did not attend the meeting of February 26, 2003. Therefore, a quorum was not met and the approval of the Summary of the Meeting of February 26, 2003, will be placed on the agenda of the next meeting on April 9, 2003. Note: It was later discovered that Mr. Ward was present at the meeting of February 26, 2003.

NEW BUSINESS:

BA03:010 DANIEL & BARBARA HAYDEN

This request was withdrawn by the petitioners.

BA03:015 GREGORY C. PANAS

Mr. Schultz

I make a motion to approve the construction of an additional detached garage on the property, as long as the second garage does not increase the accessory building floor area ratio beyond 3.765%. There must be two separate garage structures, but they can be of any configuration that does not exceed an accessory building floor area ratio of 3.765%. The new garage must meet the septic requirements. The new garage shall have the same roof height and pitch as the existing garage and it must conform with the height requirements of the Ordinance. A stake-out survey shall be required. If there are any changes to the existing grades, a grading and drainage plan must be submitted.*

*Note: A maximum accessory building floor area ratio of 3.765% was chosen because, assuming the 4.3 ft. x 3.7 ft. shed is removed, that will permit the construction of a 440 sq. ft. (20 ft. x 22 ft.) detached garage.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

The accessory building floor area ratio limit of 3% of the lot size, which in this case permits a total accessory building floor area of 1,145 sq. ft., allows a reasonable use of the property and varying that requirement would not be in conformance with the purpose and intent of the Ordinance. The proposed second garage, in combination with the existing detached garage, would exceed the footprint of the residence and it is felt that the proposed garage is too large for the narrow lot and would not be aesthetically appealing. While there may be a parking problem on the lot, due to the shared driveway, it could be remedied by the installation of an additional paved parking area and does not require the addition of another garage. If the petitioner desires additional vehicle storage, that could be accomplished by either removing the existing garage and replacing it with a new larger garage or removing the extension on the northwest side of the existing garage and constructing a smaller second garage, in conformance with the accessory building floor area ratio requirement. Therefore, despite the fact that this request is for a special exception, rather than a variance, and a special exception does not necessarily require the demonstration of an unnecessary hardship, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

BA03:016 DAVID HUIBREGTSE

Note: Mr. Schultz left the meeting prior to the deliberation on this case because he is the architect for the project.

Ms. Voelker

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried with three yes votes.

The staff's recommendation was for denial of the requested offset variance for the proposed boathouse, but approval of the removal of the condition prohibiting any further construction on the property, which was placed by the Waukesha County Board of Adjustment on variances granted in 1988 (BA88:128), and approval of a variance to remodel a non-conforming structure in excess of 50% of its fair market value, to permit the proposed entry porch on the road side of the residence and the proposed relocation of stairs leading from the deck on the lake side of the residence. The staff also recommended denial of the requested shore and floodplain setback variances to permit the proposed rebuilding of the two retaining walls on the northeast side of the stairs to the lake, but approval of shore and floodplain setback variances to permit the partial rebuilding of those retaining walls. The recommended conditions of approval are as follows:

1. The boathouse must be located in conformance with the minimum required offset (with a "sewer reduction") of least 11.66 ft. (11 ft. 8 in.) from the side lot line and with the minimum required shore setback of at least 5 ft. from the ordinary high water mark of the lake, as measured to the outer edge of the walls. The overhang of the boathouse shall not exceed 2 ft. in width.
2. The boathouse must have a garage-type door facing the lake and be placed on a permanent foundation extending below the frost line or on a concrete slab. The boathouse may not contain more than one story and its height shall not exceed 15 ft., as measured to the peak of the roof from the average grade surrounding the structure. If the boathouse is designed with a flat roof, it may have a roof-top deck.
3. There may be a sidewalk or walkway to the lake, with stairs along the side of the boathouse, provided the sidewalk, walkway, or stairs do not exceed 3 ft. in width.
4. Prior to the issuance of a zoning permit for the boathouse, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. The previously existing retaining walls northeast of the existing stairs shall not be rebuilt as they previously existed, but smaller semi-circular retaining walls may be constructed, as needed, to protect the trees in that area. The affected area shall be graded to match the grades on the southwest side of the existing stairs and the disturbed area re-vegetated no later than June 1, 2003. Erosion and sediment control measures shall be installed and maintained until the new vegetation is established.

6. Prior to the issuance of a zoning permit, a stake-out survey showing the location of all existing and proposed structures, including all proposed retaining walls, sidewalks, walkways, and stairs, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a zoning permit, the non-conforming shed near the lake and the concrete patio at the lakeshore must be removed from the property.
8. No later than six (6) months after the issuance of a zoning permit, the non-conforming shed near the road must be removed from the property.
9. In order to ensure the construction of the boathouse and the grading to be done in the area of the previously existing retaining walls does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 6.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested offset variance for the boathouse and the requested shore and floodplain setback variances to permit the retaining walls northeast of the existing stairs to the lake to be rebuilt as they previously existed, would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. While the petitioner may desire to locate the boathouse 6 ft. from the southeast lot line, the boathouse could be located a conforming 11.66 ft from the side lot line. The Land Resources Division has determined that the previously existing retaining walls northeast of the existing stairs to the lake are not necessary for erosion and sediment control. Those retaining walls could be replaced, as recommended, with smaller semi-circular retaining walls to protect the trees and the area graded to match the grades on the southwest side of the stairs to the lake. Therefore, the approval of the requested offset variance for a boathouse and the requested shore and floodplain setback variances to permit the retaining walls northeast of the existing stairs to the lake to be rebuilt as they previously existed, would not be in conformance with the purpose and intent of the Ordinance.

The existing residence is a substantial structure, which is only slightly non-conforming, that has been permitted to be extensively remodeled and expanded in the past. The proposed entry porch and relocated stairs from the deck on the lake side of the residence conform to all locational and size requirements of the Ordinance. They will result in a reasonable use of the property that is not contrary to the public interest and will not adversely affect the lake or the adjacent properties.

Replacing the previously existing retaining walls with smaller semi-circular retaining walls that

will preserve the trees, as recommended, is also not contrary to the public interest and will also not adversely affect the lake or the adjacent properties. Finally, the condition prohibiting any further construction on the property, which was placed by the Board of Adjustment in 1988 when they granted variances to permit the residence to be expanded, is no longer appropriate because the property is now served by municipal sewer and the Ordinance has been amended so that finished living area in exposed basements is no longer included in the floor area ratio calculations. Therefore, it is in conformance with the purpose and intent of the Ordinance to rescind the condition prohibiting any further construction on the property and to grant variances to remodel a non-conforming structure in excess of 50% of its fair market value, with the recommended conditions, to permit the construction of a boathouse, the construction of the proposed entry porch on the road side of the residence, and the proposed relocation of the stairs from the deck on the lake side of the residence. It is also in conformance with the purpose and intent of the Ordinance to grant variances from the shore and floodplain setback requirements of the Ordinance, as recommended, to permit the previously existing retaining walls to be replaced with smaller semi-circular retaining walls, which would protect the existing trees on the property.

BA03:017 TIM THIELE

Note: Mr. Schultz left the meeting prior to the deliberation on this case because he is the architect for the proposed addition to the residence on Lot 1.

Mr. Ward

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the following modifications:

Condition No. 6 shall be changed to permit a 40 ft. conservancy/wetland setback, rather a 50 ft. conservancy/wetland setback, on the north side of the building envelope on Lot 3.

A Condition No. 10 shall be added to provide that if the issue of the pond size affects this decision and the petitioner can show that the pond was created prior to 1963, this decision can be reconsidered under "Old Business" to address any necessary modifications.

The motion was seconded by Ms. Voelker and carried with three yes votes.

The staff's recommendation is as follows:

Denial of the requested variances from the lake frontage requirement and of the requested variances from the minimum average lot width and the minimum lot size requirements for lots not abutting a public road to permit the proposed lot line re-configurations.

Approval of a variance from the minimum average lot width and the minimum lot size requirements for lots not abutting a public road to permit the vacation of the western portion of Atkins Knoll Rd., thus causing the lot with Tim Thiele's residence (Tax Key # SUMT 0638.009) to become a lot not abutting a public road.

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Approval of a variance from the required minimum width for an ingress and egress easement serving more than one parcel, to permit the easement serving Lots, 1, 2, and 3 to be reduced to 33 ft. in width. In addition, if the proposed vacation of the western portion Atkins Knoll Rd. is

accomplished and the lot with Tim Thiele's residence (Tax Key # SUMT 0638.009) becomes a lot not abutting a public road, the ingress and egress easement serving that parcel shall be permitted to be only 33 ft. wide.

Approval of a variance to permit all driveways serving more than one residence to be only 12 ft. wide.

Denial of variances from the private road setback requirement and from the conservancy/wetland setback requirement for a building envelope on Lot 2.

Approval of a conservancy/wetland setback variance for a building envelope on Lot 3.

Approval of a special exception from the private road setback requirement to permit an addition to the residence on Lot 1.

The conditions recommended by the staff are listed below.

1. A Certified Survey Map, showing an ingress and egress easement serving Lots 1, 2, and 3, relocated as proposed and with a width of 33 ft., shall be prepared by a registered land surveyor, approved by the Town of Summit and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office.
2. If the western portion of Atkins Knoll Rd. is vacated, a Certified Survey Map showing the re-configured Outlot A and the lot with Tim Thiele's residence (Tax Key # SUMT 0638.009) must be prepared by a registered land surveyor, approved by the Town of Summit and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office. This will also require approval from the Town of Summit Planning Commission and the Waukesha County Park and Planning Commission for the creation of a lot not abutting a public road.
3. The western portion of Atkins Knoll Rd. cannot be vacated so that the lot located immediately east of the lot with Tim Thiele's residence no longer abuts a public road, unless the owners of that lot apply for and receive similar variances from the minimum average lot width and the minimum lot area requirements for lots not abutting a public road and unless the creation of another lot not abutting a public road is approved by the Town of Summit Planning Commission and the Waukesha County Park and Planning Commission.
4. If the owners of the lot located immediately east of the lot with Tim Thiele's residence apply for and receive similar variances from the minimum average lot width and the minimum lot area requirements for lots not abutting a public road and the creation of another lot not abutting a public road is approved by the Town of Summit Planning Commission and the Waukesha County Park and Planning Commission, that lot may be included in the Certified Survey Map required above.

5. Driveways serving more than one residence may be only 12 ft. wide, but they must be maintained year round and, prior to the issuance of any zoning permits for new residences on the subject property, written verification must be submitted to the Planning and Zoning Division staff from

the local fire department a 12 ft. wide driveway would allow them to provide adequate emergency protection to those residences.

6. The eastern and western sides of the building envelope on Lot 3 must be at least 35 ft. from the conservancy/wetland boundaries and the northern side of the building envelope on Lot 3 must be at least 50 ft. from the conservancy/wetland boundary. This will provide a building envelope as shown on Exhibit "G".
7. The approved building envelope on Lot 3 shall be noted on the Certified Survey Map required above.
8. The zoning permit for the proposed addition to the residence on Lot 1 shall not be issued until a Certified Survey Map with a 33 ft. wide ingress and egress easement to Lots 1, 2, and 3 is recorded in the Waukesha County Register of Deed's office.
9. The addition to the residence on Lot 1 shall be no closer to the ingress and egress easement than the existing residence.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance from the lake frontage requirement and the requested variances from minimum average lot width and the minimum lot size requirements for lots not abutting a public road, which are required to permit the proposed lot line re-configurations, would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. The existing lots, which conform with the lake frontage requirement, provide a reasonable use of the property. However, the severe topography within the platted road right-of-way of Atkins Knoll Rd., which prevented the road from being extended to serve the lot with Tim Thiele's residence (Tax Key # SUMT 0638.009), is a unique property feature that creates a hardship that justifies granting the requested variances from the minimum average lot width and the minimum lot size requirements that are necessary to allow the proposed vacation of the western portion of Atkins Knoll Rd.

A hardship exists with respect to reducing the 50 ft. wide ingress and egress easement to Lots 1, 2, and 3 and permitting the lot with Tim Thiele's residence (Tax Key # SUMT 0638.009) to be served by a 33 ft. wide ingress and egress easement because of the severe topography and because the existing residence on Lot 1 encroaches into the 50 ft. wide easement. The approval of a variance to permit the width of those ingress and egress easements to be reduced to 33 ft., with the recommended conditions, will eliminate the encroachment of the residence on Lot 1, while still providing adequate access to the lots. Even with a width of 33 ft., the ingress and egress easements would still be wider than the 20 ft. wide public road (Atkins Knoll Rd.) to which they are connected. Reducing the width of the ingress and egress easements, with the recommended conditions, is not contrary to the public interest and will facilitate relocation of the

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easement on Lot 2 outside of the wetland. Therefore, the approval of a variance from the required minimum width for an ingress and egress easement, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

The topography and the location of wooded areas and wetlands on the subject property make it

difficult to construct a 16 ft. wide driveway without removing trees and disturbing environmentally sensitive areas. Permitting the driveways to have a width of 12 ft., with the recommended conditions, is in the public interest because it will reduce tree removal and minimize land disturbance in environmentally sensitive areas, while ensuring that all residences can be adequately served by emergency vehicles. Therefore, the approval of a variance to permit 12 ft. wide driveways, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

A conforming building envelope, large enough to permit the construction of a reasonably-sized residence and garage, exists on Lot 2. Therefore, denial of variances from the private road setback and conservancy/wetland setback requirements for a building envelope on Lot 2 will not prevent a reasonable use of the lot. However, a hardship exists on Lot 3 because there is no buildable area on that lot, unless variances are granted from the conservancy/wetland setback requirements. The reduced conservancy/wetland setbacks, as recommended, are not contrary to the public interest and will grant the minimum relief necessary to permit the construction of a reasonably-sized residence and garage on Lot 3. Therefore, the approval of a variance from the conservancy/wetland setback requirement on Lot 3, with the recommended condition, is in conformance with the purpose and intent of the Ordinance.

Finally, the proposed addition to the residence on Lot 1 would not adversely affect access to the adjacent parcels and it would not be contrary to the public interest. Since the addition would be no closer to the road than the existing residence, it requires only a special exception, rather than a variance, from the private road setback requirement, and a special exception does not require the demonstration of an unnecessary hardship. Therefore, the approval of a special exception from the private road setback requirement to permit an addition to the residence on Lot 1, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA03:018 DAVID & ERIN WALDRON

Ms. Voelker

I make a motion to adopt the staff's recommendation for denial, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. It is not necessary to expand one of the two existing residences to have a reasonable use of the property. In addition, the proposed addition would result in a large increase in the amount of impervious surface on this small lot, which would be detrimental to the water quality of the lake and therefore not in the public interest. Further, it is the intent of the Ordinance that non-conforming uses and structures should be eliminated over time. The residence is an

extremely non-conforming structure and a non-conforming use and the construction of the proposed addition would only serve to perpetuate its existence. Therefore, it would not be in conformance with the purpose and intent of the Ordinance to grant the requested variances.

BA03:019 DAVID & BARBARA BARTA

Mr. Ward

I make a motion to approve the request with the following conditions:

- 1. The floor area ratio shall not exceed that percentage determined by taking the present floor area of the house, plus the requested 320 sq. ft. addition, and determining a floor area ratio percentage based on those numbers and a combined lot area of both parcels, contingent upon the established road right-of-way width of Hickory La. being reduced from 66 ft. to 40 ft. This will permit the construction of the proposed 320 sq. ft. addition, provided the established road right-of-way width of Hickory La. is reduced to 40 ft.*
- 2. The addition shall extend no closer to the road than represented by the petitioner, both in his statements at the public hearing and in his building plans showing that the addition to the second floor above the garage is inset from the exterior walls of the garage.*
- 3. Conditions No. 3 and 4 would be as recommended in the Staff Report.*
- 4. The variance granted in 1995 (BA95:71) shall be modified to reflect this variance.*

The reasons are as follows:

- 1. The proposed addition is a minor increase in the floor area ratio.*
- 2. The proposed addition is no closer to the road or to the property line than the existing house and garage.*
- 3. The proposed addition is completely on the other side of the house from the lake.*
- 4. The proposed addition doesn't increase the footprint of the house at all and would not increase the amount of impervious surface that currently exists on the property.*

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The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for denial of the request to amend Condition #1 of the variances granted in 1995 (BA95:71) , which provided that the floor area ratio shall not exceed 19.5%, but approval of the request to amend Condition #4 of the variances granted in 1995 (BA95:71), which limited the size of the residence and attached garage, exclusive of that portion of the attached garage within the established road right-of-way, to 3,012 sq. ft., to permit the construction of an addition

above the attached garage, subject to the following conditions:

1. The floor area ratio shall not exceed 19.5%, based on a combined lot area of both parcels, calculated to the edges of the established road right-of-way. *Note: If the width of the established road right-of-way remains at 66 ft., this would permit an addition of approximately 108 sq. ft. If the width of the established road right-of-way is changed to 40 ft., this would permit an addition of approximately 262 sq. ft.*
2. The proposed addition shall not extend into the established road right-of-way of Hickory La. *Note: If the established road right-of-way width remains at 66 ft., this would require the proposed addition to be cut back approximately 2 ft. so that the outer edge of the wall is at least 33 ft. from the centerline of the road right-of-way.*
3. Prior to the issuance of a zoning permit, a complete set of house plans for the proposed addition, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff.
4. Prior to the issuance of a zoning permit, a detailed cost estimate must be submitted to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit a reasonable use of the property, in the form of a slightly expanded residence that is in conformance with the floor area ratio requirement and with the intent of the previous Board of Adjustment decision. The proposed addition will not adversely affect the neighboring properties or the lake and is not contrary to the public interest. The proposed addition will be located over an existing attached garage and will not expand the footprint of the residence, thus not increasing the amount of impervious surface. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA03:133 STEVEN & CARLENE HOEHN

Ms. Voelker

I make a motion to amend our decision of January 29, 2003, which permitted remodeling and expansion of the existing residence, to also permit the construction of a new residence on a portion of the foundation of the existing residence. The conditions of approval will remain the same.

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The motion was seconded by Mr. Schultz and carried with three yes votes. Mr. Bartholomew abstained because he was not present at the January 29th meeting.

ADJOURNMENT:

Ms. Voelker

I make a motion to adjourn this meeting at 10:06 p.m.

The motion was seconded by Mr. Bartholomew and carried with three yes votes. Mr. Schultz was not present for the vote because he left the meeting prior to the deliberations on BA03:016 and BA03:017.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment

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